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## Letter Ruling 06-6: Manufacturing Corporation Classification

April 24, 2006

You request a ruling on behalf of \*\*\*\*\* Manufacturing, LLC (hereinafter, "Manufacturing LLC"), a Delaware limited liability company with its principal place of business in \*\*\*\*\* Massachusetts. In particular, you inquire as to whether Manufacturing LLC is entitled to retain the foreign manufacturing corporation status accorded to its corporate predecessor pursuant to G.L. c. 63, § 42B.

### STATEMENT OF FACTS

The following is your representation of the facts upon which we base this letter ruling. Manufacturing LLC is the successor in interest to \*\*\*\*\* Manufacturing, Inc., (hereinafter, "Manufacturing Inc."), which is identified as a manufacturing corporation on the Massachusetts Department of Revenue's current corporations list. Manufacturing LLC was originally organized on March 30, 2001. Pursuant to an Asset Purchase Agreement dated July 12, 2001, Manufacturing LLC agreed to buy all tangible and intangible assets used in the operation of Manufacturing Inc.'s business. Manufacturing LLC, as successor in interest, has continued Manufacturing Inc.'s business activities, i.e., manufacture of circuit boards, system assembly, product testing, and warranty and repair services at the facility located in \*\*\*\*\* MA. In addition, most, if not all, of Manufacturing Inc.'s senior management and employees remain employed by Manufacturing LLC.

Manufacturing LLC has affirmatively elected to be taxed as a corporation for federal income tax purposes. In each year since 2001, when completing line 3 "type of corporation" on its Corporation Excise Return (Form 355), Manufacturing LLC has selected "Classified manufacturing." Manufacturing LLC registered as a Foreign Limited Liability Company in Massachusetts on or about January 9, 2004.

Manufacturing LLC states that it was advised by the City of \*\*\*\*\* that it does not have status as a manufacturing corporation and, since its property was thus not entitled to exemption, the City intended to render an assessment against it for the most recent tax year.<sup>[1]</sup> Manufacturing LLC disputes the assertion that it must reapply for manufacturing corporation classification, contending that the conditions for reapplication are not present in this case.

### DISCUSSION

Pursuant to G.L. c. 58, § 2, the Commissioner is to forward annually to each local board of assessors a list of all corporations known to be subject to taxation. This statute further provides in pertinent part that "[s]uch list shall indicate which of said corporations have been classified by the

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commissioner as manufacturing corporations . . . .” Pursuant to the Department’s Manufacturing Corporations Regulation, 830 CMR 58.2.1(3), “[a] corporation may be classified as a manufacturing corporation for any calendar year under G.L. c. 58, § 2, in which it is in existence and is engaged in manufacturing as defined in 830 CMR 58.2.1(6), as of January 1 of that year.” 830 CMR 58.2.1(7)(a) provides that “[a]ny corporation seeking manufacturing corporation classification must file a completed application with the Commissioner.” 830 CMR 58.2.1(8)(a) further provides that “[a] corporation classified as a manufacturing corporation must reapply for manufacturing corporation classification by filing a new application on Form 355Q on or before December 31 of the year in which it: changes its name,

1. undergoes a merger or consolidation,
2. is revived as a corporation after dissolving,
3. reregisters with the Secretary of State after withdrawing from Massachusetts under G.L. c. 181, § 16, or
4. undergoes a material change in its activities.”

Manufacturing LLC asserts that that none of the events triggering the reapplication requirement set out in 830 CMR 58.2.1(8)(a) have transpired. However, from the facts presented it is evident that Manufacturing LLC is a successor to and distinct entity from Manufacturing Inc. with a different FID number. As such, Manufacturing LLC cannot simply rely on the manufacturing classification accorded to another entity. Consistent with case law and prior public written statements issued by the Department a new application for manufacturing corporation classification is required.<sup>[2]</sup>

In BNZ Materials, Inc. v. Board of Assessors of the Town of Billerica, ATB Docket Nos. X278589, X279554 (March 6, 1997) the Appellate Tax Board ruled that an entity which purchased its business from a predecessor corporation and was, at all relevant times, primarily and substantially engaged in manufacturing was not entitled to abatement of personal property taxes for periods prior to the effective date of its application to be classified as a manufacturing corporation. The same conclusion pertains in this matter.

Several of the Department’s public written statements also address this issue. In DOR Directive 00-4 (March 31, 2000), the Commissioner stated that “[a]n LLC that elects to be taxed as a corporation is *eligible to be considered* for manufacturing corporation classification, provided that it otherwise meets the requirements found at 830 CMR 58.2.1.”<sup>[3]</sup> (Emphasis supplied). In citing an LLC’s eligibility to be considered for manufacturing corporation classification, Directive 00-4 contemplates that the entity must, upon its formation, apply for this classification. Likewise, in Technical Information Release 04-15 (June 9, 2004), the Commissioner stated that “a limited liability company (LLC) . . . which is not classified as a partnership and has elected to be taxed as a corporation separate from its members for federal income tax purposes and which is engaged in manufacturing in Massachusetts . . . may now qualify as a manufacturing corporation . . . provided it meets other requirements for qualification . . . .” In stating that an entity “may now qualify,” the TIR connotes that an application is necessary.

In Letter Ruling 00-9 (June 9, 2000) a parent corporation was considering merging a subsidiary into a single member limited liability company. The subsidiary had been classified as a domestic manufacturing corporation. After its creation, the LLC was to elect, for federal income tax purposes, to be disregarded as an entity separate from its owner. It was to be treated as a division of the parent for federal income tax purposes. In addition, “[a]fter the transaction, the LLC will continue to perform the same activities and sell the same products to the same consumers . . . .” Based upon these facts, LR 00-9 concluded that “the parent, as sole member of an LLC that is treated as a disregarded entity for corporate excise purposes, *may be considered* for manufacturing corporation . . . classification based on the activities of the LLC.” (Emphasis supplied). Again, eligibility for consideration for such status clearly implies that an application must be submitted.

## CONCLUSION

The Department’s public written statements permit an LLC which has elected to be taxed as a corporation to be considered for manufacturing corporation classification. However, upon creation of the LLC, the new entity must apply for such classification. Based on the facts presented and the

foregoing authorities, Manufacturing LLC must separately apply for manufacturing corporation status under the procedures set out in the Manufacturing Corporations Regulation, 830 CMR 58.2.1(7).

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge  
Commissioner of Revenue

AL:MTF:dbb

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[1] Pursuant to G.L. c. 59, § 75, local property tax assessments with respect to real or personal property that has been unintentionally omitted from the annual assessment of taxes must be made no later than June 20th of the taxable year or ninety days after the date on which the tax bills are mailed, whichever is later.

[2] We also note that any investment tax credit (ITC) carryover under G.L. c. 63, § 31A(g) can only be used by the corporation that was originally entitled to the credit. The ITC provision, § 31A, reflects an intention to limit the credit to the corporation that acquires the property. See G.L. c. 63, § 31A(h). Thus, Manufacturing LLC would not be entitled to utilize any ITC carryover of Manufacturing, Inc.

[3] Conversely, “[n]o partnership, LLC that is taxed as a partnership, or LLC that elects to be disregarded as an entity separate from its corporate owner is eligible to be treated as a manufacturing corporation.” Directive 00-4. The basis for this prohibition is that, in order to be eligible for manufacturing corporation classification, an entity must be subject to taxation under G.L. c. 63. Partnerships and LLC’s that elect to be taxed as partnerships are taxed under G.L. c. 62 and not c. 63. Id.